DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

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FILE: B-184344 DATE: AUG 28 1975

MATTER OF: Norris C. Ellertson - Effective date of increased per diem and mileage rates authorized under Travel Expense Amendments Act of 1975

DIGEST: Blanket travel order issued on July 1, 1974, authorized per diem rate of $25 per day and mileage rate of 12 cents for use of privately owned automobile, as prescribed by Commerce Department's regulations. On May 19, 1975, Temporary Regulation A-11 (GSA), implementing the Travel Expense Amendments Act of 1975, amended the Federal Travel Regulations (FTR) to increase the maximum per diem and mileage rates for official travel. Under blanket travel order, employee who traveled May 15 to 20, 1975, is entitled to higher per diem and mileage rates of amended FTR for travel on May 19 and 20 since such rates were mandatory. 49 Comp. Gen. 493 (1970) followed. 35 Comp. Gen. 148 (1955) distinguished.

This action concerns a request for an advance decision from Richard F. Noyes, a certifying officer of the Department of Commerce, as to the per diem and mileage rates which should be used for temporary duty travel authorized before the enactment of the Travel Expense Amendments Act of 1975, Pub. L. No. 94-22, approved May 19, 1975, 89 Stat. 84 (the Act), and performed on and after the date of enactment. The Act increased the maximum per diem allowance from $25 to $35 and increased the maximum mileage allowance for privately owned automobiles from 12 cents to 20 cents.

The particular case submitted is that of Norris C. Ellertson, an employee of the Four Corners Regional Commission, who performed temporary duty travel during the period May 15 through May 20, 1975, pursuant to a blanket travel order issued July 1, 1974, for necessary travel during fiscal year 1975. The blanket travel order authorized a per diem rate of $25 per day and a rate of 12 cents per mile for the use of a privately owned automobile in accordance with Commerce Department Administrative Order (DAO) 204-1.

Under DAO 204-1 and the travel order, Mr. Ellertson was entitled to the maximum per diem rate of $25, computed on the basis of his average cost of lodgings of $18 per day, plus $10 for meals and miscellaneous expenses. However, for the period of his travel performed on May 19 and 20, 1975, Mr. Ellertson has submitted a

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travel voucher claiming per diem at the rate of $33 per day. The submission of the certifying officer states that $18, the average cost of lodgings, plus an allowance of $14 for meals and miscellaneous expenses, would result in a per diem rate of $32, if payment may be made under regulations implementing the new Act. Mr. Ellertson also claims reimbursement for the use of his privately owned automobile on May 20, 1975, at the new rate of 15 cents per mile.

Since Mr. Ellertson's travel order was issued prior to the increase in per diem and mileage rates authorized by the Act, the certifying officer asks whether the voucher claiming the higher rates may be certified for payment. In this regard, the submission cites our decision, 35 Comp. Gen. 148 (1955), which held that a prior statutory per diem and mileage increase was not automatic and required administrative action before higher rates became effective, and which also held that per diem or mileage fixed by travel orders may not be increased retroactively.

The submission is answered as follows. For both the per diem increase and the mileage increase, the Act is expressly qualified by the phrase "[u]nder regulations prescribed under section 5707 of this title [title 5, United States Code] * * *." The Act further amends section 5707 of title 5, United States Code, in pertinent part, to provide that "[t]he Administrator of General Services shall prescribe regulations necessary for the administration of this subchapter [subchapter I of chapter 57 of title 5, United States Code, dealing with travel and subsistence expenses and mileage allowances] * * *."

Under the authority of the Act, the General Services Administration (GSA) on May 19, 1975, implemented the provisions of the Act by issuing to the heads of Federal agencies its Temporary Regulation A-11, Federal Property Management Regulations (FPMR), entitled "Changes to Federal Travel Regulations." Paragraph 2 of Temporary Regulation A-11 states that "[t]his regulation is effective for travel performed on or after May 19, 1975." Paragraph 4 thereof states that the regulation is applicable "to the official travel of employees of Government agencies as defined in 5 U.S.C. 5701, except employees of the judicial branch." The temporary regulation was published in the Federal Register on May 21, 1975 (40 F.R. 22182), and was corrected and republished on May 23, 1975 (40 F.R. 22617).

Accordingly, for official travel on or after May 19, 1975, travel orders issued by an agency are valid only to the extent that they are consistent with the provisions of Temporary Regulation A-11. See 49 Comp. Gen. 493 (1970). Therefore, insofar as the new regulation provides that an employee is entitled to a specific allowance or rate of reimbursement without providing administrative discretion to an agency to alter such rates or allowances, an agency may not properly provide for a different rate or allowance by travel regulations or travel orders.

In construing the last statutory per diem increase from $16 to $25 (Pub. L. No. 91-114, Nov. 10, 1969), we stated in 49 Comp. Gen. 493, 494, supra, that such an increase is not automatic but requires administrative action before it becomes effective and that there is no authority to retroactively increase rates in travel orders issued prior to the statutory date, citing 35 Comp. Gen. 148 (1955) as our authority. However, since both the Bureau of the Budget and the Per Diem, Travel and Transportation Allowance Committee of the Defense Department had promulgated changes in their respective regulations on November 10, 1969, to give immediate effect to the statute by prescribing mandatory per diem rates effective as of that date, we there held that such administrative action established the per diem entitlement of all employees in the Department of Defense and that travelers who were authorized per diem in accordance with the Joint Travel Regulations (JTR) should be allowed the difference between the $25 rate and the $16 rate. We further held that the prohibition on retroactive amendment of travel orders was not applicable. 49 Comp. Gen. 493, at 495.

We believe that the present situation in 1975 is the same as that in 1969 considered in 49 Comp. Gen. 493, supra, and we adhere to the conclusions reached therein. Furthermore, since 35 Comp. Gen. 148, supra, has been construed by the Department of Commerce and presumably by others to possibly preclude changing previously issued travel orders to conform to new rates prescribed pursuant to statute, we wish to make it clear that that decision is to be distinguished from the present case. It does not apply to mandatory increases in rates of per diem or mileage pursuant to regulations implementing statutory per diem and mileage rate increases.

Accordingly, on and after May 19, 1975, the effective rates of per diem and mileage for official travel of civilian employees

of Government agencies are the rates established by Temporary Regulation A-11, issued by GSA under the authority of the Act. The foregoing sentence applies both to travel orders issued prior to the date of enactment and those issued thereafter.

For travel in the conterminous United States when lodging is required, FTR para. 1-7.3c is changed by Temporary Regulation A-11 (May 19, 1975), to require an agency to establish the per diem rate on the basis of the average amount the traveler pays for lodging plus an allowance of $14 for meals and miscellaneous expenses, not to exceed a daily rate of $33. For this type of travel, the only discretion vested in an individual agency to set a per diem rate other than one computed in accordance with the lodgings-plus provisions arises when a proper agency official determines under the criteria specified that the lodgings-plus system is not appropriate for particular travel.

The record in the present case indicates that by travel order issued July 1, 1974, Mr. Ellertson was authorized per diem under the lodgings-plus system at a maximum per diem rate of $25, as provided for in DAO 204-1. In accordance with the foregoing discussion, Mr. Ellertson became entitled, under Temporary Regulation A-11, for travel performed on May 19 and 20, 1975, to per diem at a rate, not to exceed $33, computed on the lodgings-plus basis using an allowance of $14 for meals and miscellaneous expenses. Since the Commerce Department's audit shows that he is entitled to per diem of $32 only (average lodging of $18 per night plus $14 meals and miscellaneous expense), he should be reimbursed accordingly.

The same reasoning applies to Mr. Ellertson's claim for reimbursement for the use of a privately owned automobile on May 20, 1975, at the rate of 15 cents per mile. His travel voucher indicates that the only travel by a privately owned automobile for which he claims reimbursement at this rate was from the airport to his residence. In this regard, section 5 of Temporary Regulation A-11 amended FTR para. 1-4.2c(1), effective May 19, 1975, to provide that payment on a mileage basis at the rate of 15 cents per mile shall be allowed, in lieu of reimbursement for the use of a taxi, for the employee's use of a privately owned automobile from a terminal to his home.

Accordingly, Mr. Ellertson may be properly reimbursed for the use of his privately owned automobile on May 20, 1975, for travel from the airport to his residence at the rate of 15 cents per mile.

R.F. KELLER

Deputy Comptroller General
of the United States